

UNITED STATES OF DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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U.S. DISTRICT COURT
DISTRICT OF MASS.

FRED T. VAN DAM,
Plaintiff

vs.

DAVID M. McSWEENEY,
Trustee of MC Realty Trust,
ROCKLAND LEASE FUNDING CORP.,
UNITED STATES OF AMERICA, and
GENERAL ELECTRIC COMMERCIAL
EQUIPMENT FINANCING,
Defendants

Case No. 04-12654-RGS

**DEFENDANT ROCKLAND LEASE FUNDING CORP.'S LIMITED OPPOSITION TO
DAVID M. McSWEENEY'S MOTION TO IMPOUND AFFIDAVIT**

Counsel for the Defendant Rockland Lease Funding Corp. ("Rockland") hereby files this Limited Opposition to the Motion to Impound Affidavit (the "Affidavit") filed by counsel for Defendant David M. McSweeney, Trustee of MC Realty Trust ("McSweeney") in this matter on the grounds that the information contained in the said Affidavit is, if not privileged, discoverable. Rockland further states as follows:

1. Rockland hereby adopts and incorporates by reference the arguments and legal reasoning set forth in the Limited Opposition filed by Plaintiff Fred T. Van Dam ("Van Dam") in this matter.
2. Both Rockland and the Plaintiff in the instant action were lenders to David M. McSweeney, individually. The nature, although not the substance, of the counterclaims raised by McSweeney in the instant action are essentially identical to the counterclaims made by McSweeney against Rockland in the pending Norfolk Superior Court action¹.

¹ As previously reported to this Court, Rockland and McSweeney are awaiting, *inter alia*, the Norfolk Superior Court's (Borenstein, J.) decision on the parties' cross-motions for summary judgment that were argued on or about February 23, 2005.

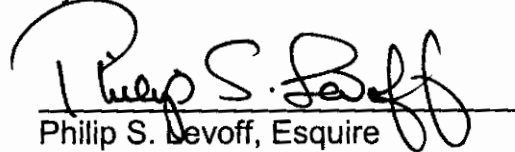
3. Both Rockland and Van Dam have answered the respective counterclaims and alleged that those counterclaims are essentially spurious and constitute a bad-faith effort by David M. McSweeney to avoid payment of legitimate monetary obligations to both Rockland and to Van Dam².

4. Rockland cannot determine whether it should oppose the pending Motion to Withdraw filed by McSweeney's counsel unless and until it knows what the reasons are for the requested withdrawal, and particularly whether the reasons set forth therein apply to the merits of McSweeney's counterclaim against Van Dam, and perhaps to the merits of McSweeney's counterclaim against Rockland, since the counterclaims in both cases are so similar in nature.

5. Rockland does not oppose the impounding of the Affidavit from the general public so long as Rockland was able to review the Affidavit and determine whether to oppose McSweeney's counsel's Motion to Withdraw based upon that review.

WHEREFORE, Defendant Rockland Lease Funding Corp.'s counsel requests that Defendant David M. McSweeney, Trustee of McRealty Trust's counsel's Motion to Impound Affidavit be denied and that Rockland's counsel be entitled to view the Affidavit, and for any other relief this Court deems proper and just.

Respectfully submitted,
Rockland Lease Funding Corp.
By its counsel:



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² Van Dam is the foreclosing first mortgagee on real property previously owned by McSweeney that secured Van Dam's loan; Rockland is the second mortgagee on the same property that secured Rockland's loan. But for the counterclaims against Van Dam raised by McSweeney in this case, the only issue that this Court must decide is who is entitled to the surplus foreclosure proceeds, presumably after the Norfolk Superior Court case has been decided.

CERTIFICATE OF SERVICE

I, Philip S. Levoff, Esquire, hereby certify that a true copy of Defendant Rockland Lease Funding Corp.'s Limited Opposition to David M. McSweeney's Motion to Impound Affidavit was served upon the following by regular mail, postage prepaid on this 8th day of June, 2005:

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Rockland\Federal Case\Limited Opposition